IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 11816 OF 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

==========

SHAH EDUCATION & MEDICAL FOUNDATION - Petitioner(s)

Versus

JAMNAGAR MUNICIPAL CORPORATION - Respondent(s)

==========

Appearance :

MR. PRASHANT G. DESAI for Petitioner(s).
MR. J.R. NANAVATI for Respondent(s).

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 01/03/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Mr.Prashant G.Desai, learned Counsel for the petitioners, and Mr.J.R.Nanavati, learned Counsel for the respondents, are finally heard.

2. Present is a petition under Article 226/227 of the Constitution of India, challenging the correctness, validity and propriety of Order dated 30th January, 2003 and Order dated 13th March, 2003, so also Notice No.9904 issued by the respondents, requiring the petitioners to pay the total tax of Rs.2,29,437/- and Rs.10/- as notice charges.

3. The facts, in a nutshell, are that the petitioners claim themselves to be a Public Charitable Trust duly registered under the provisions of the Bombay Public Trust Act, 1950, having Registration No. E-840 dated 16th April, 1990. According to the petitioners, all the Trustees of the said Trust are citizens of India and they are entitled to enforcement of their fundamental rights guaranteed under the Constitution of India. According to the petitioners, they being a registered Public Charitable Trust, they have goals and objects and for providing medical assistance to the general public, they had constructed a hospital at Jamnagar. According to them, the Trust is carrying its public activities and is providing many benefits to the general public in the form of a charitable institution. According to them, the Trust made an application under Section-12(A)(a) of the Income Tax Act and the Commissioner of Income Tax, Rajkot had given a Certificate under Section-80(G)(5) of the Income Tax Act on 4th June, 2001.

The petitioners submit that in accordance with Section-132 of the Bombay Provincial Municipal Corporation Act,

1959 (Act No.LIX of 1949) [for short “the Act”], the Corporation issued a notice to them for their assessment. A copy of the notice has been annexed with the reply filed by the Corporation. It is filed at Annexure-R1. The Trust filed its reply on 29th July, 2002 (Annexure-R/2 to the reply of the Corporation). The present Trust clearly stated that their institution is registered at Serial No. E-840 on 16th April, 1990 in the Office of the Commissioner as a Charitable Trust and for the purposes of carrying out the goals of the Trust, they have raised such construction of the building. It appears that after such reply was filed, final order came to be passed on 25th October, 2002 and the present petitioners were held liable to pay the tax.

4. The learned Counsel for the petitioners submitted that the order, rejecting their submissions, is bad firstly, because no hearing was afforded to them, secondly, because no reasons are given in the order and, thirdly, because Section-132 of the Act has an inbuilt deeming fiction that tax would not be leviable against the buildings and lands or portions thereof solely occupied and used for public worship or for a public charitable purpose.

His submission, in fact, is that by Order dated 30th January, 2003, the petitioners' exemption application was rejected and the petitioners' application dated 10th March, 2003, requesting for reconsideration, was again rejected on

13th March, 2003. He submits that the order passed by the authority deserves to be set aside and the petitioners be held entitled to exemption.

5. Mr.J.R.Nanavati, learned Counsel for the respondents, with his usual vehemence, submitted that proper opportunity of hearing was given, there are no requirement of law for providing reasons while rejecting the objection and imposing tax or holding particular person/property liable for tax. For Section-132 of the Act and its deeming fiction, it is submitted that the deeming fiction would be applicable in case where the authority is satisfied that the property falls within Clause-(b) of Sub.Section-(1) of Section-132 of the Act.

6. True it is, that Section-132 of the Act does not speak of providing an opportunity of hearing, but, in a case where the order proposed to be passed would lead to civil consequences and would hold a particular person liable to pay particular tax, an opportunity is required to be read in the provisions of law. If somebody makes a submission to the Taxing Authority that his case falls under Clauses (a), (b) or (c) of Sub.Section-(1) of Section-132 of the Act and, therefore, they are not liable to tax, then, the authority would be obliged to provide an opportunity of hearing to particular person so that the person gets an opportunity to prove his case. In case no inquiry is made or no opportunity is provided, then, we would be leaving everything to the discretion of the Taxing

Authority. The law does not say that in a given matter, an opportunity of hearing, if not provided by the Statute, should at all not be provided.

7. It is further to be seen that the order, directing imposition of tax and holding that the petitioners are liable to pay the tax, does not assign any reason. The order is absolutely silent in relation to the submissions made by the petitioners. It is trite law that if an objection is raised by any person, even before the Taxing Authority, then, before giving a final conclusion, the Authority must give reasons for rejecting such submissions. In the present matter, the authority did not even refer to the said objections. It simply observed that the present Trust is liable to be taxed. In our considered opinion, the approach of the Taxing Officer cannot be at all held to be valid or in accordance with law.

8. Mr.J.R.Nanavati, learned Counsel for the respondents, submitted that the order passed under Section-132 of the Act can be challenged in a statutory appeal and this Court, therefore, should not interfere in the matter.

In our considered opinion, alternative remedy is no bar to the exercise of discretion of the High Court. The Supreme Court has repeatedly said that in case of violation of the principles of natural justice, in case where the facts are not in dispute or in case where the order shocks the conscience

of the Court, the alternative remedy shall not be any bar. In the present matter, the principles of natural justice have been violated to their hilt; the order is patently bad because it does not give reasons and contains latent illegality in not considering the objections raised by the petitioners.

9. For the reasons aforesaid, we cannot approve the orders passed by the Taxing Authority. We, accordingly, quash the same. As a consequence of which, the demand notice is also quashed. The petitioners would be entitled to a hearing by the Taxing Authority. The petitioners shall appear before the Taxing Officer on 20th August, 2002, they would be allowed to submit their case and the Taxing Officer shall be obliged to pass a speaking order giving reasons for accepting or rejecting the submissions made by the petitioners. Rule is made absolute. There shall be no order as to costs.

[R.S.Garg, J.]

[Bankim N. Mehta, J.]

*kamlesh**